

## 15 Day Text of Proposed Regulations

In the following, double bold underline indicates additional added text, and double bold ~~strike through~~ indicates additional deleted text to the originally proposed text.

### 3000. Definitions.

Section 3000 is amended to alphabetically merge the definition below with those that exist in the regulations.

California Out-of-State Correctional Facility (COCF). The COCF is a program through which male CDCR inmates are transferred to out-of-state correctional facilities that have contracted with the CDCR to provide housing, security, health care and rehabilitative programming services to CDCR inmates.

Note: Authority cited: Sections 2717.3, 5058 and 5058.3, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 646.9, 653m, 832.5, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 4570, 5009, 5054, 5068, and 7000 et seq., and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Section 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; In re Bittaker, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; and Section 11007, Health and Safety Code.

### 3190. General Policy

Subsections 3190(a) through 3190(b)(1)(I) remain unchanged.

Subsection 3190(b)(2) is amended to read:

**(b)(2)** Authorized Personal Property Schedule—Levels I, II, III, Male Conservation Camps, California Out Of State Facilities (COCF) and Community Correctional Facilities (Rev. 2/1/08). This personal property schedule applies to the following facilities:

Subsections 3190(b)(2)(A) through 3190(t) remain unchanged.

### **3375. Classification Process**

**Subsection 3375(a) through 3375(g)(5)(R) remain unchanged.**

**Subsection 3375(g)(6) through 3375(g)(6)(B) is adopted to read:**

(6) Documentation for each classification committee review for transfer to the COCF program shall include the case factors listed in 3375(g)(5) and:

(A) Attorney consultation.

(B) Conviction history.

**Subsection 3375(h) through 3375(k)(2) remain unchanged.**

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 5054, and 5068, and 11191, Penal Code; Section 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *Wright v. Enomoto* (1976) 462 F.Supp. 397; *Stoneham v. Rushen* (1984) 156 Cal.App.3d 302; and *Castillo v. Alameida, et al.*, (N.D. Cal., No. C94-2847)

### **3376.1 Departmental Review Board**

**Subsection 3376.1(a) through 3376.1(d)(4) remain unchanged.**

**Subsection 3376.1(d)(5) is amended to read:**

(5) An out-of-state or federal prison placement is recommended by the institution classification committee for a Western Interstate Corrections Compact (WICC), PC Section 11190, an Interstate Corrections Compact (ICC), PC Section 11189, or a Federal Placement, PC Section 2911. A California Out-of-State Correctional Facility (COCF) transfer shall not require a DRB review or institution classification committee action.

**Subsection 3376.1(d)(6) through 3376.1(d)(7)(e) remain unchanged.**

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054, and 5068, and 11191, Penal Code; Section 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *Sandin v. Connor* (1995) 515 U.S. 472; and *Madrid v. Gomez* (N.D.Cal. 1995) 889 F.Supp. 1146.

### **3379. Inmate Transfers.**

**Subsection 3379(a)(1) through (a)(8) are unchanged.**

**New Subsection 3379(a)(9) through 3379(a)(9)(I) are adopted to read:**

(9) California Out-of-State Correctional Facility (COCF) Transfers. Every male inmate is potentially eligible for a COCF transfer. Every male inmate shall be reviewed for transfer eligibility to the COCF program during Reception Center processing, at initial classification committees, and at any classification committee when any temporary ineligibility for COCF transfer has been resolved. COCF transfers may occur voluntarily or involuntarily.

(A) Eligibility. A CDCR male inmate is eligible to be transferred to COCF if the inmate:

1. Has remaining time to serve of no less than 6 months and no more than 30 years at the time of CSR endorsement.

2. Is Security level I-III.

3. Has a degree of custody established at or potentially eligible for Medium A, Medium B or Close B Custody.

(B) Ineligibility. ~~A CDCR inmate is ineligible to be transferred if: An inmate is ineligible if his custody designation is established at or is potentially eligible for Minimum A, Minimum B or Close A custody.~~

1. The inmate has a custody designation level established at or is potentially eligible for Minimum A, Minimum B, or Close A.

2. In CDCR's discretion, considerations such as disciplinary history, security concerns, or other case factors make the transfer of an inmate inappropriate.

(C) Any California inmate who volunteers or is notified that he is eligible for involuntarily transfer to COCF shall be informed of the opportunity to seek legal consultation with an attorney:

1. Prior to the completion of the Institutional Staff Recommendation Summary (ISRS) for Reception Center inmates.

2. Prior to a classification committee for non-Reception Center inmates.

3. Inmates shall have the ability to waive the attorney consultation.

(D) The notification of eligibility, and the notification of opportunity for attorney consultation and interpreter needs, shall be documented on the CDC Form 128-B (Rev 4/74), General Chrono.

(E) The information regarding the attorney consultation or waiver of such consultation by the inmate shall be documented:

1. At the Reception Centers, on the ISRS.

2. For all non-Reception Center inmates, on the CDC Form 128-G (Rev. 10/89), Classification Chrono.

(F) Voluntary Transfer. An inmate who is eligible for transfer to COCF and volunteers for such a transfer shall sign a CDCR Form 2169 (Rev. 8/08), Out Of State Placement Agreement, which is hereby incorporated by reference. Notwithstanding subdivision (a)(6), COCF inmates are not required to sign a CDC Form 294 (Rev. 7/88). Upon notification of potential involuntary transfer, inmates shall no longer be eligible for voluntary transfer.

1. An inmate who volunteers for transfer to COCF may waive his opportunity to consult with an attorney by signing a CDCR Form 2168 (Rev. 08/08), Attorney Waiver Statement, which is hereby incorporated by reference.

2. Inmates with serious medical or dental conditions as determined by designated Health Care staff, or inmates having any other applicable serious medical condition which appropriately designates him under the supervision of the medical Receiver, operating as applicable under the supervision of the medical receiver and those operating under the federal court decrees and Program Guides approved by the court in *Coleman v. Schwarzenegger* or who are in the Mental Health Services Delivery System at the Enhanced Outpatient Program level of care or higher may volunteer for a COCF transfer upon executing written consent. Those inmates who are presently within the Mental Health Services Delivery System at any level of care may not volunteer for a COCF transfer even upon executing written consent, until and unless their transfer is permitted by court order. An inmate for whom appropriate care out of state is available and for whom such transfer will not have a detrimental impact on the healthcare needs of the inmate, and who has executed written consent to transfer to COCF, will be considered for transfer on a case-by-case basis by designated Health Care staff.

~~(G) Involuntary Transfer. Inmates with serious medical or dental conditions as determined by designated Health Care staff operating as~~

~~applicable under the supervision of the medical receiver and those operating under the federal court decrees and Program Guides approved by the court in Coleman v. Schwarzenegger or who are in the Mental Health Services Delivery System at the Enhanced Outpatient Program level of care or higher are not eligible for involuntary transfer.~~

(G) Involuntary Transfer. An inmate is not eligible for involuntary transfer if:

1. The inmate has a serious medical or dental condition as determined by designated Health Care Staff, or the inmate has a serious medical condition as determined by designated Health care Staff operating as applicable under the supervision of the medical Receiver.

2. An inmate with a serious mental disorder as defined by the class certification order and Revised Program Guide of Coleman v. Schwarzenegger and who is a present member of the Mental Health Services Delivery System at any level of care.

3. The inmate is a class member under the federal court decree in Clark v. Schwarzenegger at the level of DD1, DD2 or DD3.

4. The inmate is a class member under the federal court decree in Armstrong v. Schwarzenegger and has a medical condition related to a disability that renders extended travel unsafe and/or requires active medical intervention.

5. The inmate is a class member under the federal court decree in Armstrong v. Schwarzenegger and cannot perform daily living tasks including eating, dressing, and hygiene without personal assistance. Inmates in this group may be housed in Outpatient Housing Units or medical facilities. Inmates who merely require assistance such as another person to carry a tray at meals or read written documents are specifically not excluded from transfer.

6. The inmate is a class member under the federal court decree in Armstrong v. Schwarzenegger and is on dialysis.

(H) Involuntary transfer priorities include but are not limited to the following:

1. Inmates who have been previously deported by the federal government and are criminal aliens subject to immediate deportation; or have been convicted of an aggravated felony as defined by federal statute 8 USC section 1101(a)(43) and are subject to deportation. Inmates in these groups are eligible for involuntary transfer when they have an active hold placed by Immigration and

Customs Enforcement (ICE) or they have been referred to ICE by CDCR for a determination of whether ICE will place an active hold on them.

2. Inmates who are paroling outside of California.

3. Inmates who are unassigned and had no visit with an immediate family member as defined in Section 3000 during the one year period prior to the date that the eligibility list with the inmate's name is generated.

4. Inmates in any job assignment, as determined by CDCR, and had no visit with an immediate family member during the one year period prior to the date that the eligibility list with the inmate's name is generated.

5. Inmates who are unassigned. Visiting history will not affect a transfer decision.

6. Inmates in any job assignment, as determined by CDCR. Visiting history will not affect a transfer decision.

7. Any other inmate who is not in any of the groups above but is potentially eligible for a COCF transfer.

(l) Inmates transferred to a COCF program remain under the legal custody of the CDCR and shall be subject to the rules, rights and privileges of the CDCR in accordance with the California Code of Regulations (CCR), Division 3, Title 15.

**Subsections 3379(b) through (d)(4) are unchanged.**

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2911, 5025, 5054, 5068, 5080 and 11191, Penal Code; Section 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *Armstrong v. Schwarzenegger*, United States District Court, N.D. Cal., No. C-94-2307 CW, Stipulation and Proposed Order issued November 30, 2006; *Coleman v. Schwarzenegger*, United States District Court, E.D. Cal., No. CIV-S-90-0520 LKK JFM P, Order issued November 6, 2006; and Whitaker v. Rushen (9th Cir. 1983) 720 F.2d 1132, 1135.